PPG Industries, Inc., Lexington Plant, Fiber Glass Division *and* Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 11-CA-8815 and 11-CA-8980

February 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On June 1, 1981, Administrative Law Judge Abraham Frank issued the attached Decision in this proceeding. Thereafter, Respondent filed an exception, a supporting and an answering brief, and the Charging Party filed exceptions and a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, PPG Industries, Inc., Lexington Plant, Fiber Glass Division, Lexington, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order."

[1] The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

A. FRANK, Administrative Law Judge: The charge in Case 11-CA-8815 was filed on December 14, 1979,[1] and the charge in Case 11-CA-8980 was filed on March 10, 1980.[2] The order consolidating cases and the consolidated complaint, alleging violations of Section 8(a)(1) and (3) of the Act, issued on April 25, 1980. The hearing was held on June 24 to 26, 1980, inclusive, at Winston-Salem, North Carolina. All briefs filed have been considered.[3]

At issue in this case are questions whether Respondent discharged an employee because of his union and protected concerted activities, unlawfully interrogated another employee, and unlawfully discharged a supervisor because of his refusal to engage in unlawful activity.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PRELIMINARY FINDINGS AND CONCLUSIONS

Respondent, a Pennsylvania corporation, with a plant located in Lexington, North Carolina, the only facility involved in this proceeding is engaged in the manufacture of fiber glass products at that location. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party, hereinafter the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

The Union embarked on a campaign to organize Respondent's employees in early March 1978. On July 6 and 7, 1978, an election was conducted among Respondent's employees at the Lexington plant. Following objections to the conduct of the election, a hearing was held and the Union subsequently was certified by the Board on September 11. In the interim numerous charges of conduct violative of Section 8(a)(1) and (3) of the Act were filed by the Union against Respondent. These charges culminated in the issuance of a complaint by the Regional Director. A hearing was held before Administrative Law Judge Hutton S. Brandon in February and March. Judge Brandon issued his Decision on November 5, finding certain violations of Section 8(a)(1) and (3) and dismissing others. On August 27, 1980, the Board, with minor variations, affirmed the substance of Judge Brandon's Decision.[4]

III. THE FACTS

A. *The Discharge of Arthur Lee (Sonny) Crowell*

Crowell began working for Respondent in February 1974, and was discharged on November 27. Crowell signed a union card during the first day of the Union's

[1] All dates are in 1979 unless otherwise noted.

[2] On October 16, 1980, Hugh M. Finnerman, Senior Counsel, Labor, PPG Industries, Inc., notified me as of that date that he was the attorney of record in this case, replacing Jesse S. Hogg and his law firm.

[3] Certain errors in the transcript have been noted and corrected.

[4] 251 NLRB 1146.

campaign in March 1978. About a month later Crowell became a member of the Union's in-plant organizing committee. Along with numerous other employees he participated in handbilling in front of Respondent's gates. He testified for the General Counsel in the hearing before Administrative Law Judge Brandon.

In October Crowell and a Teamsters official visited Pittsburgh during the World Series game. Upon Crowell's return to Lexington, a handbill, dated October 15 and distributed before Respondent's gates during the latter part of October, described Crowell's and the Union's activities in Pittsburgh. The handbill was signed "Sonny Crowell" and was addressed to "Fellow PPG Employees." Crowell told the employees that on October 13 an airplane circulated over the Three Rivers Stadium during the World Series trailing a banner with the legend: "PPG UNFAIR TO TEAMSTERS IN NORTH CAROLINA." Crowell also told the employees that he and several Teamsters officials were interviewed on Pittsburgh TV channels during his visit. They informed viewers about "PPG's attitude toward southern workers" and how PPG "has tried to deny us our rights." Crowell said that some of the news reporting occurred in front of Respondent's corporate offices. Crowell concluded his letter as follows: "This was just the opening shot. I feel like we really caught the attention of the big shots at PPG in Pittsburgh."

From December 1978 until his discharge in November, Crowell's job was that of a truck puller. This job requires the use of a towmotor to haul full and empty "pin trucks," in-plant cargo trailers. Each pin truck carries a number of spindles on which full bobbins of yarn are loaded for movement out of the production area to other processing areas. It is the responsibility of the truck puller to haul away the full pin trucks and return with empty trucks so that the production and processing employees can fulfill their functions. The towmotor pulls about 10 pin trucks.

In November Crowell was employed on the swing shift, ending at midnight on C Crew under the immediate supervision of Harold Burns and the overall supervision of Crew Foreman Rudolph Hartley. Crowell used towmotor 9. According to Crowell and several other employees who used towmotor 9, that vehicle was in poor mechanical condition. The brakes did not operate properly and on occasion the battery would smoke.

The record shows that Crowell received three disciplinary writeups in 1976, two in 1978 relating to poor attendance, and 11 in 1979 relating primarily to poor performance and attendance. His absence record for 1978 shows five unfavorable comments: four because of poor attendance and one relating to wasting time. His absence record for 1979 shows 11 unfavorable comments relating to poor attendance and poor performance.

On March 7 Foremam Lindsey Owens, the then immediate supervisor of Crowell, talked to Crowell about falling behind in his work and putting a burden on the yarn handlers.

On March 8, acting on the basis of personal observation and complaints from other crews, Hartley called Crowell to the fabrication office. In the presence of Robert Byerly, the twisting foreman, Hartley told Crowell he was not keeping his job up and was talking too much. Crowell disagreed and said he was trying to keep up his job.

On May 23 Crowell was called to the office of James M. Williams, the area supervisor. There he was again lectured by Hartley and Williams because of his performance. Hartley told Crowell that they were doffing less frames than the other crews and using more hours; that Hartley expected Crowell to keep up his job or Hartley would replace Crowell. Hartley said it was the last time he would talk to Crowell about job performance. During the meeting Williams showed Crowell 10 to 15 writeups going back to 1974. Williams told Crowell, "I haven't seen this much confetti in a man's folder in so many years." Crowell again denied he was talking too much and showed Williams a card indicating that Crowell had pulled approximately 480 trucks.

Several days later the name of Crowell and other members of C Crew were called out on the public address system for outstanding performamce.

On November 17 Hartley wrote up Crowell because Crowell had shouted at another employee to put her safety glasses on. Hartley told Crowell to let Foreman Burns or Hartley do the correction of other employees. Hartley also told Crowell to concentrate on his own job rather than talking so much. If he kept his job up Hartley would not be getting complaints from the succeeding crew.

On November 20 Hartley received a memo from Foreman Leon Gibson whose crew at times followed C Crew. Gibson suggested that Hartley take a close look at truck moving on his shift, that a number of trucks were being left over, particularly from bays 11 through 17. During November Crowell was responsible for bays 10 through 18, the "Back Bays." Foreman Leo Church, whose crew also followed C Crew on occasion also complained about Crowell's performamce.

Hartley initiated his own check of Crowell's performance as early as November 16. On that date Hartley noted that Crowell had been left 6 trucks by the previous crew and left 26 trucks for the crew that followed him. On November 17 there were 10 trucks at the start of the shift and 14 at the end. On November 18 the figure was 10 at the beginning of the shift, and 25 at the end. The figure for November 19 was 11 at the beginning of the shift, 43 at the end. On November 20 the figure was 15 at the beginning of the shift, 22 at the end. On November 24 the figure was 14 at the beginning of the shift, 30 at the end. Hartley testified that 15-20 trucks left over for the next shift in a particular area was a reasonable number, but anything over that would be excessive.

Crowell was absent on November 25 and 26. During Crowell's absence his job was performed by Kim James. Hartley noted that Kim James was keeping the job up better, leaving less trucks at the end of the shift.

On the morning of November 27 Hartley recommended to William Rogers, the area supervisor in the fabrication department, that Crowell be discharged for poor performance. Rogers agreed and took the matter to Robert Kirkendall, the personnel manager. Kirkendall

and Rogers reviewed Crowell's personnel record and discussed the various reprimands Crowell had received during his period of employment with Respondent. Kirkendall told Rogers that Kirkendall would review the recommendation with Richard Cameron, the manager of employee relations, and also talk with legal counsel. Kirkendall did review the matter with Cameron, who spoke with Respondent's counsel concerning the discharge. At or about 3 p.m. Kirkendall instructed Rogers to bring Crowell to the personnel office.

In the personnel office Rogers reviewed Crowell's personnel file, essentially for the year 1979, amd told Crowell that he was being discharged for poor performance. Crowell said, "Well, Harold Burns here lately has been telling me that I have been doing a pretty good job; in fact, he told Medford Shoaf and myself that we had been doing a pretty good job." Rogers told Crowell that as far as the record showed Crowell had been talked to on numerous occasions about his poor job performance and the Company had no recourse except to terminate him. Crowell said, "I will be back."

Harold Burns, who became Crowell's immediate supervisor in August, testified that he had, in fact, complimented Crowell on several occasions. Burns had taken a course in "Performance Management" and undertook to improve Crowell's performance by the technique of "positive reinforcement." This technique required Burns to "brag about" anything good Crowell did in the hope that Crowell would then be influenced to do an even better job.[5] Burns had words of praise for Crowell on at least two occasions in September and the first part of October. However, in October Burns informed Hartley that Burns was giving up on Crowell because Burns could not improve Crowell's performance. Burns issued no disciplinary writeups to Crowell and did not inform Crowell that Burns had given up trying to improve Crowell's work performance. Burns was not consulted by Respondent's officials before Crowell's termination.

Several employees on Crowell's crew testified that they complained frequently to their supervisors about Crowell. He did not bring them enough yarn when they needed it and did not maintain an adequate supply of empty pin trucks to "doff" their frames. Lynn Hendley complained about Crowell four or five times a week when he worked as a truck puller in the Back Bay area. Dorothy Bailey complained about Crowell just about every day. Hendley and Bailey also complained, to a lesser extent, about Medford Shoaf, another truck puller, who was employed by Respondent at the time of the hearing. Thomas Terry, an inspector packer, also complained about Crowell in 1978 and for the period in 1979 when Terry was assigned to the area served by Crowell.

Crowell and the other truck pullers rotated on a monthly basis from the Back Bay to the Front Bay areas. The Back Bay area is the most difficult area for the truck pullers to serve. Complaints by Hendley and Bailey that Crowell was not keeping up his job occurred while Crowell was serving this area. Crowell worked in the Back Bay during the last month of his employment. He conceded that he had difficulty maintaining the proper number of empty and full pin trucks for the production and processing employees during this period. He testified that his poor performance was due to the faulty condition of towmotor 9 and the excessive amount of overtime in the Back Bay area during the last 2 weeks of his employment. Overtime for the production employees resulted in more yarn coming off the frames. The full pin trucks would pile up in the aisles, placing an additional burden on the truck pullers. Crowell testified that he was never given assistance when he asked for it. On one occasion he told Hartley it was impossible for Crowell to keep up the job with the amount of yarn coming off the frames. Hartley grinned and walked off.

B. *The Discharge of John Jones*

Jones began working for Respondent on April 30, 1974, and was discharged on September 24. At the time of his termination he was a foreman in the forming department, C Crew, under the immediate supervision of Don Bailey, the area supervisor, and Norman Bell, the department superintendent. At all times material herein Jones was a supervisor within the meaning of the Act.

Sometime in the spring of 1979 Robert Dickerson, production superintendent, and Richard Cameron, employee relations manager, both of whom were new in their jobs, initiated a series of meetings with the foremen of the several crews for the purpose of improving managerial relationships and employee morale. The Union's organizational campaign at the Lexington plant was part of the program and the schedule.

Two meetings were held with the foremen of C Crew: the first on June 13 and the second on July 12. The first meeting for C Crew was held at a private dinner club in Lexington, the Dutch Club. Present at this meeting were Dickerson, who conducted the meeting, Kirkendall, and 11 or 12 crew foremen and area foremen from the three departments, including Jones. Dickerson led off by informing the foremen that the purpose of the meeting was to improve supervisor-employee morale. He asked the foremen their views as to the top 10 problems in the plant. James Saunders, the performance manager, recorded each item on an easel as they were offered by the various foremen. Next, the foremen were asked what they needed from management to improve their morale and the morale of the employees. The foremen were then asked what they thought they could do to influence morale in their areas. Finally, a straw vote of the foremen was taken to determine how many employees were for the Union, undecided, or for the Company. During the course of the meeting the foremen were asked to select five employees whom the foremen felt could talk to new employees or employees who were undecided, to talk to them by any legal means possible, and to make sure they understood the Company's position. Dickerson suggested that the foremen attempt to turn the employees around in their thinking, to point out all the Company's benefits, the evils of the Union, the fact that the employees could be assessed for strikes beyond their own

[5] On December 21, about a week following the filing of a charge with the Board relating to Crowell's discharge, Burns prepared a memo to the effect that he had attempted to improve Crowell's performance by encouraging him whenever possible, that the attempt was unsuccessful, and that it was discontinued by Burns on October 1.

area. If the foremen could turn 20 employees around in each crew, that would swing a new election in the Company's favor.

The second meeting was held at the plant. Cameron, but not Kirkendall, was present at this meeting. Also present were the C Crew foremen and area foremen, including Jones. Dickerson and Saunders discussed the problems that the foremen from all crews had offered for management consideration during the first meetings. Saunders had prepared a list of 15 items, work problems, which he projected on a view graph. Dickerson and Saunders reported to the foremen the actions they had taken with respect to these problems. Dickerson and Saunders then went around the room asking each foreman to feed back the type of information they had received from the employees whom they had contacted. Another straw vote was then taken. The straw vote showed that since the June meeting with C Crew the Union appeared to have lost some ground in favor of the undecided category.

Seven foremen reported on their conversations with employees with respect to the Union. Several reported progress in influencing employees. Ken Lowder stated he had talked to a few people and that there was no way to sway the hard-core union sympathizers. Four foremen, Lindsay Owens, Martha Scott, Tony Smith, and Jones did not report that they had talked to their employees about the Union. Owens and Scott are still employed as supervisors by Respondent.

Upon examination by counsel for the Charging Party, Jones testified, contrary to the testimony of Dickerson and other witnesses for Respondent, that at one of the meetings the discussion centered on older employees who were bringing peer pressure in signing up new employees. Management felt that the former were influencing employees that could be swayed either way. Dickerson told the foremen to keep the older employees in their immediate work area as much as possible and not to let them overstay their breaks. If they overstayed their breaks, the foremen were to write them up, the writeup to be a written reprimand, which would be put in their personnel files.

I do not credit Jones' testimony that Dickerson, in effect, instructed the foremen, including Jones, to restrict the union activity of employees under their supervision and, if necessary, discipline employees because of such activity. Jones was an unimpressive witness. His memory was vague on dates and he recalled having dinner at the Dutch Club only during cross-examination. His testimony that the Dutch Club dinner was merely a social gathering for supervisors is not believable. There is other evidence in the record casting serious doubt as to his credibility. Particularly damaging is his testimony at the hearing before Administrative Law Judge Brandon that he had not had conversations about the Union with employee Carrey Gosnell. Administrative Law Judge Brandon discredited that testimony. In the instant case Jones testified that his response to questions in the former proceeding as to such conversations amounted to "splitting hairs" and that he had responded as he did because he wanted to protect his job. In fact, Jones admitted that he had cautioned Gosnell with respect to Gosnell's union activity, contrary to Jones' testimony before Administrative Law Judge Brandon. Jones' motive, the protection of his job, which caused him to falsify his testimony before Administrative Law Judge Brandon, exists equally, if not more so, in the instant case. In such circumstances I cannot credit his uncorroborated testimony denied by other credible witnesses.

In September, about a week prior to Jones' termination, Jones was called to Bailey's office. Bailey said, "John, sit down. I need to talk to you. Mr. Dickerson is very unhappy with you. It seems that you have not given a performance that has pleased him at all and I suggest that you get it on the ball. Have you got any problems that you want to discuss with me?" Jones said, "No." There was some further conversation during which Jones was told that he was being denied a 5-percent cost-of-living raise at the request of Mr. Dickerson.

On September 24 at or about 11 a.m. Jones was told to report to the personnel office. Dickerson and Cameron were present. Dickerson told Jones that he was being terminated for poor performance as a supervisor. Dickerson pointed out that Jones had missed 8 days during the year and that Jones had not called in prior to the start of the shift on two occasions. Dickerson said that Jones had shown an inability or unwillingness to get along with his peer supervisors and superiors. Jones explained that he had not reported he would be off on one shift because he was under heavy medication at the time and could not be awakened. Jones also argued that his crew was on top or close to the top most of the time and he had computer reports by management recognizing that type of performance. Dickerson and Cameron replied that those reports were in recognition of the employees' rather than the supervisors' performance and did not necessarily indicate that Jones was doing a good job. Jones was again told that he was being terminated and he would be granted a month's severance pay. According to Dickerson, the interview lasted 35 to 45 minutes.

Jones testified, contrary to Dickerson, that the meeting was brief, that he did not ask for and was not given a reason for his discharge. Dickerson merely asked if Jones was aware of why Jones had been called to the personnel office. Jones said something to the effect that he was reasonably sure. Dickerson then said, "Okay, we will get right to the point. You have got to either follow the game plan or get off the team." Jones replied, "A man's job is not a game." He was then terminated with 30 days' severance pay. I credit Dickerson.

Evidence introduced by the General Counsel shows that Jones' rating from May 1, 1976, to October 25, 1978, was "overall competent" with notations that he needed more experience, but was continuing to improve. On the latter date his rating dropped to "overall adequate," with a notation by Bell that "John was improving until the union organizing campaign started." On April 11 Jones was again rated as "overall competent," with a notation by Bell that Jones "had shown more improvement since the past appraisal than any person I have been associated with."

C. *The Alleged Interrogation of William M. Scarce*

Scarce was first employed by Respondent at the Lexington plant in January. In August he was called to the office of Curtis Putnam, Scarce's supervisor. Scarce testified that for the first 10 minutes they talked about job-related matters and then the subject of the Union was discussed. Scarce asked Putnam his thoughts about the Union. Putnam said he could not get into details, but the Union was no good for Scarce. According to Scarce, Putnam then asked if Scarce had signed a union card. Scarce said, "Yes."

According to Putnam, he asked Scarce how he liked the job and the Company's benefits and pay. Scarce said they were just great and he could not understand why anybody wanted a union at that plant to begin with. Putnam agreed. Putnam denied he had asked Scarce whether Scarce had signed a union card.

Scarce was discharged by Respondent on November 14 and his discharge was included in the charge filed by the Union in Case 11-CA-8815. The complaint does not allege Scarce's discharge to be violative of the Act. Prior to his discharge, Scarce did not mention to anyone that Putnam had asked Scarce whether he had signed a union card.

Scarce's testimony on cross-examination is somewhat confusing as to the critical point whether Putnam specifically asked Scarce if he had signed a union card. According to Scarce, Putnam told Scarce that Putnam could not tell Scarce to sign a card or not, that it was "kind of your decision." Scarce also testified that, after asking if Scarce had signed a card, Putnam said that he could not ask Scarce "outright whether—that he couldn't say I had signed one or not signed one, he couldn't tell me that because he wasn't in a place to do that."

Apart from the discharge of Jones and Crowell, the above interrogation of Scarce is the only alleged incident of conduct violative of Section 8(a)(1) in this complaint.

I am satisfied that there was some discussion of the Union and union cards in the conversation between Scarce and Putnam. However, after the extended hearing before Administrative Law Judge Brandon in February and March, Respondent's supervisors would be keenly aware of potential unfair labor practice charges if they questioned employees directly about their union activity, including the signing of cards. Scarce's own testimony suggests that Putnam realized the legal limitations on his right to discuss the Union and the signing of cards with Scarce.

Taking all of the evidence into consideration, I credit Putnam over Scarce and find that Putnam did not ask Scarce directly or "outright" if Scarce had signed a union card.

Analysis

I. I conclude that Respondent violated Section 8(a)(1) and (3) of the Act by discharging Arthur Lee Crowell on November 27.

Crowell, an early and known union activist, had been employed by Respondent for more than 5 years when he was summarily discharged in November.

It is Respondent's position that Crowell was discharged because of his poor performance, evidenced particularly by the writeups in his personnel file during 1979 and complaints about his performance by supervisors and employees during the same period. Respondent, of course, has a right to discharge employees for inefficiency or, indeed, for any reason other than their union and protected concerted activity. I have considered the evidence adduced by the Respondent most carefully. Crowell conceded that he had difficulty keeping up with his job when assigned to the Back Bay areas, but blamed his work problems on poor equipment, the excessive amount of overtime for the production employees, and his supervisor's failure to provide needed assistance. I am not persuaded that Crowell's explanation totally exonerates him from the charge of poor performance. But I am also not convinced that Crowell's poor performance record, dating from the beginning of the Union's organizational campaign, was the motivating reason for his discharge.

Crowell was not the only poor performing truck puller working under Burns' supervision on C Crew. Bailey and Hendley, who complained about Crowell, also complained about Medford Shoaf at least once or twice a week. Shoaf was still employed at the time of the hearing and, so far as the record shows, no discipline was meted out to him as a result of recurring complaints. Burns himself admitted that other employees who worked under his supervision had poor performance records. Indeed, despite Crowell's record of poor performance, which Respondent contends is "damning," Rogers, Crowell's area supervisor and the official who discharged Crowell, was not aware that Crowell was a below-average employee until Hartley provided that information on the very day of Crowell's discharge.

Nor is the record of Crowell's performance entirely negative. Warned in May that he was not keeping up his job, he was praised a few days later over the public address system for superior performance. From August to October he was complimented by Burns on several occasions. Accepting Burns' explanation that he was only praising Crowell to improve the performance of a poor performer, Burns' attempt to rehabilitate Crowell suggests that Crowell, a worker good enough to save in September, was not worth saving in October and had to be discharged in November. Burns testified that he informed Hartley during the first part of October that Burns had given up on Crowell. But neither Burns nor Hartley warned Crowell that he was on the razor's edge. Burns never issued a disciplinary writeup to Crowell. Rather, Burns left Crowell with the impression that Burns thought Crowell was doing a pretty good job. Burns was not consulted by Hartley in recommending Crowell's discharge. Nor was Burns consulted by Respondent's higher officials when the decision was made within hours of Hartley's recommendation to discharge Crowell forthwith.

No specific incident triggered Crowell's discharge on November 27. Hartley decided to recommend Crowell's discharge at 9 a.m. Rogers agreed almost immediately. By 3 p.m. the recommendation was accepted by Kirken-

dall and Cameron, after consultation with counsel. Although Crowell was a veteran with more than 5 years of employment at the Lexington plant in various jobs, he was called to the personnel office and summarily discharged because of poor performance. The exit interview was terse and perfunctory. No other job was offered him.

I realize that Crowell was not the only known union activist at the Lexington plant. Respondent was aware that at least 400 employees were on the Union's in-plant organizing committee. Many employees wore union armbands and insignia and openly engaged in handbilling before the plant gates. However, in October Crowell engaged in a particular form of union activity that placed him in a separate, if not unique, category of union supporters. He alone had the effrontery or courage, depending on the point of view, to sign his name to a handbill publicly challenging Respondent's top management in their dispute with the Union. Crowell boasted that he had appeared on TV stations in Pittsburgh, the location of Respondent's main office, and that millions of TV viewers had been informed that Respondent was acting like the J.P. Stevens Company and was treating its Lexington employees unfairly. Whether or not Crowell was successful in attracting the attention of Respondent's "big shots" in Pittsburgh, as he claimed, he certainly attracted the attention of Respondent's top officials in Lexington.

I conclude that Respondent's decision to discharge Crowell followed, and was occasioned by, the distribution of the October handbill, which he signed. While his performance record may have been a factor in that decision, I find that he would not have been discharged but for his conduct with respect to that handbill, a union and protected concerted activity. Cf. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

II. I conclude that Respondent did not violate Section 8(a)(1) of the Act by discharging Supervisor John Jones.

The General Counsel argues that Dickerson's instructions to the foremen of C Crew, including Jones, to talk to new or undecided employees and attempt to influence them for the Company by pointing out the Company's benefits and the disadvantages of a unionized plant amounted to an order to engage in unfair labor practices. I do not agree. Employers have a right under the constitution and Section 8(c) of the Act to express "their views, argument, or opinion" with respect to unions so long as such expression contains "no threat of reprisal or force or promise of benefit." Within the limitation of noncoercive speech an employer may lawfully communicate his views about unionism or his specific views about a particular union. *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 618 (1969). Dickerson directed the C Crew foremen to talk to employees under their supervision by "any legal means possible" and to make sure they understood the Company's position. Nothing in the credited testimony suggests that the foremen were told to make promises of benefit or threats, or to unlawfully interrogate employees concerning their union activities. As early as March 1978, Respondent's supervisors were informed of their legal right to express the Company's views about the Union in a memorandum entitled "Legal Law in Brief." The memorandum encouraged supervisors to express their own views regarding unions, to discuss company benefits, and to point out the disadvantages of a unionized plant. Supervisors were also warned not to engage in threats, spying on union meetings, interrogating employees about union matters, and discriminating against employees because of their union activity. Dickerson's request of the foremen of C Crew to influence employees for the Company and against the Union goes no further than the March 1978 memorandum, in evidence as Respondent's Exhibit 1. The cases cited by the General Counsel are not in point. In *Russell Stover Candies, Inc.*, 223 NLRB 592 (1976), a supervisor was discharged because he refused to spy on employees' union activities. In *Miami Coca Cola Bottling Company d/b/a Key West Coca Cola Bottling Co.*, 140 NLRB 1359 (1963), a supervisor was discharged because he refused to discharge union adherents. No such instructions were given by Dickerson to supervisors, including Jones, in this case.

In view of the foregoing I find it unnecessary to decide whether Jones was discharged because of his poor performance as a supervisor, as alleged by Respondent, or because he was neutral toward the Union and refused to talk to employees under his supervision on behalf of the Company and against the Union, as alleged by the General Counsel. I reserved judgment on Respondent's motion at the hearing to dismiss this allegation of the complaint. The motion is granted.

III. In view of my finding above, crediting Putnam over Scarce, I conclude that Respondent did not unlawfully interrogate Scarce in August in violation of Section 8(a)(1) of the Act.

The unfair labor practices found above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[6]

The Respondent, PPG Industries, Inc., Lexington Plant, Fiber Glass Division, Lexington, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees to discourage union activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Arthur Lee Crowell immediate and full reinstatement to his former position, if available, or, if that

[6] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

position no longer exists, to a substantially equivalent position, with the wage rate he enjoyed at the time of his discharge, plus any increases, without prejudice to his seniority and other rights and privileges, and make him whole for all losses suffered by him as a result of the discrimination against him in the manner set forth by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950); with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977); see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(b) Post at its plant in Lexington, North Carolina, copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 11 , after being duly signed by its representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that Respondent violated Section 8(a)(1) of the Act by discharging Supervisor John Jones and by unlawfully interrogating employee William M. Scarce.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against our employees to discourage their union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Arthur Lee Crowell immediate and full reinstatement to his former position, if available, or, if that position no longer exists, to a substantially equivalent position, with the wage rate he enjoyed at the time of his discharge, plus any increase, without prejudice to his seniority and other rights and privileges, and make him whole for all losses suffered by him as a result of our discrimination against him, with interest.

PPG INDUSTRIES, INC., LEXINGTON PLANT, FIBER GLASS DIVISION.